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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,170	08/05/2003	Jiing-Yang Wu	08415-005001	6339
26161	7590	09/01/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			MAHAFKEY, KELLY J	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 09/01/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/634,170	Applicant(s) WU ET AL.	
	Examiner Kelly Mahafkey	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 16-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Amendments made June 7, 2006 have been entered.

Claims 1-14 and 16-21 are pending.

Specification

The amendment filed June 7, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material that is not supported by the original disclosure is as follows: the grain product as comprising "corn" and "mung bean". Although the specification, as originally filed, has support for "sweet corn" and "green bean" it did not have support for the general species, "corn", or for "mung bean".

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 4 and 14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

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had possession of the claimed invention. The added material that is not supported by the original disclosure is as follows: the grain product as comprising "corn" and "mung bean". Although the specification, as originally filled, has support for "sweet corn" and "green bean" it did not have support for the general species, "corn", or for "mung bean".

Note: The previous 112 second paragraph rejection of claim 15 has been withdrawn in light of applicant's amendments filed June 7, 2006.

Claim Rejections - 35 USC § 102

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5, 7, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Rockland et al. (US 4124727). The references and rejection are incorporated herein as cited in the office action mailed March 2, 2006.

The new limitations, as incorporated into claim 1 by the amendments made June 7, 2006, include grinding a plurality of materials selected from the group consisting of grains and legumes to form a ground material with between 80-200 mesh, and subjecting the ground material to mixing, water-adding, extrusion, forming, and drying. Applicant is referred to Rockland, Abstract, which teaches a plurality of materials selected from the group consisting of grains and legumes to form a extruded final product. Rockland, Examples 1 and 2 and Column 4 lines 55-65, teaches of grounding the legumes to a mesh size of around 100 mesh and utilizing rice flour (i.e. ground rice). Note: As demonstrated by Ingredients101, rice flour has a particle size of 50-100 mesh.

Thus, Rockland inherently teaches of grinding the grains to a particle size within the recited range. Rockland, Column 5 lines 22-41, teaches that the ground material is mixed, combined with water, extruded, and formed into a desired final shape.

Rockland, Column 5 lines 60-65, teaches that the formed product is then dehydrated by frying. Note: Applicant claims drying of the extruded product. Drying is defined as the act of dehydration. Thus, Rockland reads upon the claimed process or drying of the food product.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland in view of Igoe (Dictionary of Food Ingredients). The references and rejection are incorporated herein as cited in the office action mailed March 2, 2006.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland further in view of Oplinger et al. (Alternative Field Crops Manual). The references and rejection are incorporated herein as cited in the office action mailed March 2, 2006.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland in view of Duke (*Coix lacryma-jobi* L.). The references and rejection are incorporated herein as cited in the office action mailed March 2, 2006.

Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland in view of Murray (Rice bran may lower cholesterol). The references and rejection are incorporated herein as cited in the office action mailed March 2, 2006.

New Rejections

Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland in view Sadel, Jr. et al. (US 4778690).

Rockland, Abstract, teaches a plurality of materials selected from the group consisting of grains and legumes to form an extruded final product. Rockland, Examples 1 and 2 and Column 4 lines 55-65, teaches of grounding the legumes to a mesh size of around 100 mesh and utilizing rice flour (i.e. ground rice). Note: As demonstrated by Ingredients 101, rice flour has a particle size of 50-100 mesh. Thus, Rockland inherently teaches of grinding the grains to a particle size within the recited range. Rockland, Column 5 lines 22-41, teaches that the ground material is mixed, combined with water, extruded, and formed into a desired final shape. Rockland, Column 5 lines 60-65, teaches that the formed product is then dehydrated by frying. Note: Applicant claims drying of the extruded product. Drying is defined as the act of dehydration. Thus, Rockland reads upon the claimed process or drying of the food product. Rockland teaches, Example 2, that the ground material contains 1-50% rice flour.

Rockland, however, is silent to the extrusion parameters, specifically extrusion at a temperature of 50-150C or 50-110C for 1-3 minutes as recited in claims 16 and 17 and to the entire range of mesh size as recited in claims 16 and 18.

Regarding the extrusion parameters, specifically extrusion at a temperature of 50-150C or 50-110C for 1-3 minutes as recited in claims 16 and 17, Sadel Jr. et al. (Sadel) teaches of an improved method for the manufacture of extruded grain products (Abstract). Sadel teaches of teaches mixing, water adding, extruded, forming, and drying of the grain product (Column 3 line 6 through Column 4 line 51). Sadel teaches that the extrusion process is at a temperature of 80-120C for 1-4 minutes (Column 2 lines 5-23 and Column 3 lines 53-60 and Column 4 lines 5-10). Sadel teaches that the extrusion method lowers the fat content in the final grain product and is more energy efficient with similar grain processes (Column 2 lines 26-30 and 42-46). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include the extrusion parameters (i.e. extrusion at a temperature of 80-120C for 1-4 minutes) for grain products as disclosed by Sadel in the process of producing the extruded grain product of Rockland. One would have been motivated to do so since Rockland discloses of an extruded grain product but does not discloses of specific extruding parameters for that grain product, and because Sadel teaches that extruding a grain product at a temperature of 80-120C for 1-4 minutes improves the fat content of the product and is energy efficient.

Regarding the entire range of mesh size as recited in claims 16 and 18, Rockland teaches of a mesh size of 18 to 100 and higher. Rockland teaches that the

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particle size is dependant upon the desired amount of fat absorbed into the product (i.e. a smaller mesh size material would cause less absorption of fat in the final product.) Refer specifically to Rockland Column 4 lines 59-66. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include ground material with a mesh size around 18 to 100 and higher, as taught by Rockland, depending on the desired fat content of the final product.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rockland in view of Sadel as applied to claims 16-19 above, and further in view of Igoe (Dictionary of Food Ingredients). Claims 20 and 21 recite limitations that are similar to the limitations of claims 8 and 9, and thus are rejected for the same reasons, of record, as claims 8 and 9.

Response to Arguments

Applicant's arguments filed June 7, 2006 in regards to the 102 rejection of claims 1-5, 7, and 14 have been fully considered but they are not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Specifically, applicant states, "Amended claim 1 covers a reconstituted grain product prepared by a method not disclosed by Rockland. Applicants submit that claim 1, thus amended, is not anticipated by this reference." Applicant is referred to the

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102 rejection above in which it is clear that Rockland teaches of the reconstituted grain product as claimed by applicant. Applicant is further reminded that a recitation of the method of making the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. Thus, the claimed invention is anticipated by the reference, absent any clear and convincing evidence and/or arguments to the contrary.

Applicant's arguments filed June 7, 2006 in regards to the 103 rejections of claims 6 and 8-13 have been fully considered but they are not persuasive.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant argues the patentability of claims 6 and 8-13 based on their dependency of claim 1 by stating, "None of the cited references teaches or suggests the manufacturing method recited in claim 1." Applicant does not specifically point out how the language of the *any* of the claims (i.e. claims 1, 6, or 8-13) patentably distinguishes them from the references. Applicant is referred to the rejections above in which it is clear that the reconstituted grain product, as claimed by applicant, is taught by the references.

Applicant's arguments filed June 7, 2006 with respect to claims 16-21 have been considered but are moot in view of the new ground(s) of rejection as necessitated by

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amendments filed June 7, 2006. Applicant is referred to the rejection as incorporated herein.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kelly Mahafkey
Examiner
Art Unit 1761



KEITH HENDRICKS
PRIMARY EXAMINER